

The Asbestos Compensation Tribunal

Annual Report

2019/2020

Presented to both Houses of Parliament
pursuant to section 134 of the *Asbestos-
Related Diseases (Occupational Exposure)
Compensation Act 2011*





ASBESTOS COMPENSATION TRIBUNAL

TASMANIA

12 October 2020

The Hon. Elise Archer
Minister for Building & Construction
Level 10, 15 Murray Street
HOBART TAS 7000

Dear Minister

ASBESTOS COMPENSATION TRIBUNAL - ANNUAL REPORT 2019/2020

I am pleased to submit the 2019/2020 Annual Report for the Asbestos Compensation Tribunal. The report summarises the operation of the Tribunal during the financial year commencing 1 July 2019.

Following the tabling of the report in Parliament, it will be available for public access on the Tribunal's website at www.asbestotribunal.tas.gov.au.

If you have any queries, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A M Clues'.

A M Clues
Chairperson

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In accordance with s134 of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* (the Act) I submit to the Minister my report on the operation of the Tribunal during the 2019/2020 financial year.

1 Overview

The Asbestos Compensation Tribunal (ACT) is an independent statutory tribunal established by s129 of the Act. Its primary responsibility is to determine all matters referred to it pursuant to the Act (see s130). Examples of matters that can be referred to the Tribunal include:

- a determination of the Asbestos Compensation Commissioner for compensation under s70¹;
- a determination of the Asbestos Compensation Commissioner of an application to vary a lump sum entitlement to compensation under s75 or s77, such application being made under s74 or s76²;
- questions as to whether the Asbestos Compensation Commissioner is required to pay any or all expenses specified in a claim under s121(1), whether the services the subject of the expenses claimed were required or necessarily incurred, whether the amount of the expenses claimed is reasonable or the period for which any constant attendance services are to be provided³;
- questions as to who are members of the family of a person who has a compensable disease or questions as to the apportionment of the total lump sum to which members of the family of the person who has a compensable disease are entitled⁴.

The ACT is currently constituted by the Chief Commissioner and Commissioner who by reason of s129 of the Act are the Chief Commissioner and Commissioner within the meaning of the *Workers Rehabilitation and Compensation Act 1988*. These positions are separate and independent of the Asbestos Compensation Commissioner⁵.

Both the Chief Commissioner and the Commissioner fulfill the requirements of the *Workers Rehabilitation and Compensation Act 1988* in that they are Australian lawyers of at least 5 years standing as Australian legal practitioners⁶. The Chief Commissioner and the Commissioner are both appointed on a full-time basis.

The functions of the ACT are:

- To determine all claims for compensation referred to it under the Act.
- To determine such other matters as are referred to it under the Act.

1 s124

2 s125

3 s126

4 s127

5 Who is appointed pursuant to s153

6 s17A and s17B of the *Workers Rehabilitation and Compensation Act 1988*

- To exercise the powers conferred and the duties imposed on it in the Act⁷.

The ACT may conduct conciliation conferences in appropriate circumstances in order to resolve disputes by agreement. Hearings can be held in Hobart and Launceston to resolve disputes by arbitration where agreement cannot be reached between the parties.

The Tribunal is operated along the same lines as the Workers Rehabilitation & Compensation Tribunal (WRCT) for reasons of efficiency and consistency. The Tribunal's website is located at: <http://www.asbestotribunal.tas.gov.au/>.

2 Tribunal Premises

The ACT is co-located with the WRCT and three other tribunals (the Health Practitioners Tribunal, the Motor Accidents Compensation Tribunal and the Anti-Discrimination Tribunal).

As from July 2020 the ACT shares accommodation with a number of other tribunals at the new Tribunal Centre at 38 Barrack Street, Hobart. The new premises has a number of purpose built rooms designed for hearings, mediations and meetings.

In Launceston the tribunals moved to new and improved premises at 1/111, St John Street in August 2015. These leased premises provide a hearing room, two conference rooms and two meeting rooms as well as office space for staff. These rooms are also made available to other tribunals.

Signage at premises in both Hobart and Launceston reflect the colocation of these tribunals.

If a conciliation is required of a matter where the claimant is based on the North West Coast then rooms at the Devonport Community & Health Services Centre at 23 Steele Street, Devonport are utilised.

Tribunal staff are based in Hobart and travel as required to the North or North-West of the State.

Video and telephone conferencing as well as recording facilities are available at the premises in Hobart and Launceston.

3 Referrals for 2019/2020 and COVID-19

The ACT received four referrals during the 2019/2020 financial year.

A party to a proceeding before the ACT who is aggrieved by a determination, order, ruling or direction of the ACT may appeal to the Supreme Court on a question of law⁸.

In 2019/2020 there were no appeals to the Supreme Court.

The operation of the ACT was not impacted at all by COVID-19

⁷ ss130 and 131
⁸ s152

4 Report on Financial Statement

The ACT does not have a specific budget and accordingly all work and expenses are accounted for in the WRCT budget.

An agreement has been reached with the Department of Justice, which has been in place since 2011, whereby the Asbestos Compensation Commissioner reimburses the WRCT for various items which are related to the performance of functions imposed on the ACT under the Act. The WRCT provides a breakdown of work performed each quarter and seeks reimbursement for the cost of the work performed.

Fees for formal hearings, directions hearings etc. have been set by way of this agreement and are to be reviewed annually.

Other items may include but are not limited to:

- the cost of the provision of the ACT Commissioner's Clerk;
- the use of ACT's premises and resources such as video link, equipment, telephone and digital voice recording systems;
- the ACT Commissioner's vehicle use including petrol; and
- the ACT Commissioner's and Clerk's mobile telephone costs during travel periods.

There has been accounting to the Asbestos Compensation Commissioner in the sum of \$3,250.00 in the 2019/2020 financial year for work done in that financial year and in the previous financial year.

Given both the ACT and WRCT are funded from the Workers Compensation Fund (non-consolidated revenue) it has previously been recommended that an annual contribution towards the administration and function of the ACT be included in the annual budget allocation for the WRCT rather than following the accounting and reimbursement method set out in the agreement. An audit conducted by KPMG, which was engaged by the Department of Justice, examined the funding and accounting of the various tribunals administered by the WRCT. The objective of the audit was to consider the application of, and accounting for, the funds provided to support the various activities of the tribunals overseen by the Chief Commissioner of the WRCT, to ensure those funds were being applied in compliance with current policies and legislative requirements of the various tribunals. The audit commenced in August 2017 and was finalised in February 2018. In summary the audit found that the current procedures used to account for ACT funds are effective. It recommended the agreement be reviewed to ensure the fees being charged for the services being provided adequately reflect the cost of providing those services. This review has not yet occurred. It has previously been suggested that there be a move away from the accounting and reimbursement method set out in the agreement to the provision of an annual contribution to the budget of the WRCT. As a result the ACT will have more time to dedicate to its core business; i.e. processing, mediating and determining disputes between litigants who refer matters to the various tribunals administered by the WRCT.

The budget will need to be reviewed upon the amalgamation of all tribunals in 2021.

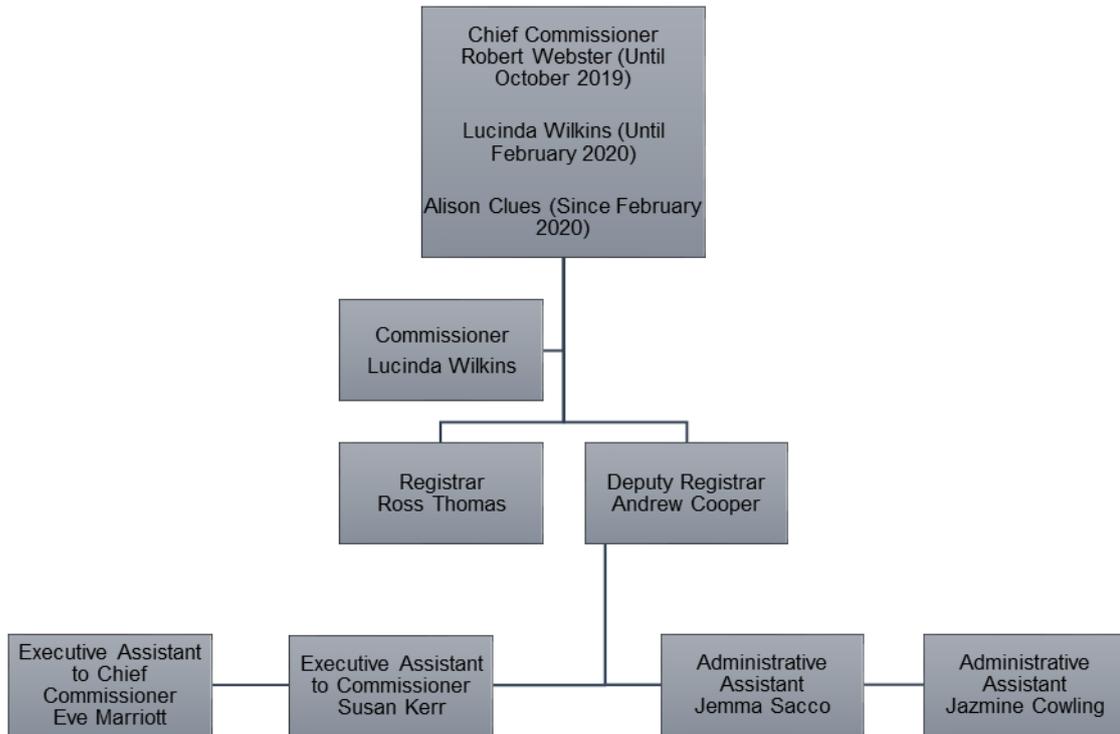
5 Intent for 2019/2020

- The delivery of a fair and efficient dispute resolution service including the provision of just and timely decisions.
- Work with the Department and the other heads of tribunals to ensure a seamless amalgamation of all tribunals at the new premises which will include a review of the most effective way of ensuring appropriate budgeting for the ACT and all tribunals currently supported by the WRCT.

6 Members of Tribunal & Staff

The staff of this ACT, which are set out in the chart below, carry out the same or similar duties for the Workers Rehabilitation & Compensation Tribunal, Health Practitioners Tribunal, Motor Accidents Compensation Tribunal and Anti-Discrimination Tribunal.

I express my appreciation to my staff for the work they have performed this year and assisting me with a smooth integration into my current role.




A M Clues
Chief Commissioner